MAR 7 2003

No. 02-306

In the Supreme Court of the United States

BENEFICIAL NATIONAL BANK, ET AL., PETITIONERS

v.

MARIE ANDERSON, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONERS

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QUESTION PRESENTED

Whether a claim alleging usury by a national bank necessarily arises under the exclusive federal cause of action created by Section 30 of the National Bank Act, ch. 106, 13 Stat. 108 (12 U.S.C. 86), and is therefore removable to federal court.

TABLE OF CONTENTS

	Page
Interest of the United States	1
Statement	1
Summary of argument	4
Argument:	
A claim alleging usury by a national bank necessarily arises under the exclusive cause of action created by the National Bank Act and is thus removable to federal court	8
A. The text of the removal statute makes clear that any claim "arising under" federal law is removable, and a claim within the scope of an exclusive federal cause of action necessarily arises under federal law	8
B. This Court's cases confirm that a claim within the scope of an exclusive federal cause of action is removable even if the claim does not purport to rely on federal law	11
C. The rule that a claim within the scope of an exclusive federal cause of action is removable advances the purposes of the removal statute	16
D. The National Bank Act creates the exclusive cause of action for usury by a national bank, and respondents' usury claim falls within the scope of that cause of action	20
E. The court of appeals erred by requiring specific evidence that Congress, when it enacted the National Bank Act, intended to allow removal of usury claims	26
Conclusion	30
Appendix	1a

TABLE OF AUTHORITIES

Cases: Page

American Airlines v. *Wolens*, 513 U.S. 219 (1995) 19
American Well Works Co. v. *Layne & Bowler Co.*, 241 U.S. 257 (1916) 9
Avco Corp. v. *Aero Lodge No. 735*, 390 U.S. 557 (1968) 5, 11, 28
Barnet v. *National Bank*, 98 U.S. 555 (1879) 22
Boys Mkts., Inc. v. *Clerks Union*, 398 U.S. 235 (1970) 16
Caterpillar Inc. v. *Lewis*, 516 U.S. 61 (1996) 18
Caterpillar Inc. v. *Williams*, 482 U.S. 386 (1987) 3, 9-10, 11, 12, 15, 17
Chicago, Rock Island & Pac. R.R. v. *Stude*, 346 U.S. 574 (1929) 18
Cohen v. *Welden Nat'l Bank*, 146 A. 252 (Vt. 1929) 23
Community Bank & Trust, N.A. v. *Keyser*, 285 S.E.2d 424 (W. Va. 1981) 23
Easton v. *Iowa*, 188 U.S. 220 (1903) 7, 24
England v. *Louisiana State Bd. of Med. Exam'rs*, 375 U.S. 411 (1964) 17
Evans v. *National Bank*, 251 U.S. 108 (1919) 22
Farmers' & Mechs.' Nat'l Bank v. *Dearing*, 91 U.S. 29 (1875) 2, 7, 21, 22
First Nat'l Bank v. *Nowlin*, 509 F.2d 872 (8th Cir. 1975) 23
Franchise Tax Bd. v. *Construction Laborers Vacation Trust*, 463 U.S. 1 (1983) ..... *passim*
Gold-Washing & Water Co. v. *Keys*, 96 U.S. 199 (1877) 18
Gully v. *First Nat'l Bank*, 299 U.S. 109 (1936) 10
Hasteline v. *Central Nat'l Bank*, 183 U.S. 132 1901) 22
Hawaiian Airlines, Inc. v. *Finazzo*, 512 U.S. 246 (1994) 19

Cases—Continued: Page

Hillsborough County v. *Automated Med. Labs., Inc.*, 471 U.S. 707 (1985) 10
Louisville & Nashville R.R. v. *Mottley*, 211 U.S. 149 (1908) 9
Marquette Nat'l Bank v. *First of Omaha Serv. Corp.*, 439 U.S. 299 (1978) 7, 25
Martin v. *Hunter's Lessee*, 14 U.S. (1 Wheat.) 304 (1816) 16
McCollum v. *Hamilton Nat'l Bank*, 303 U.S. 245 (1938) 23
M'Culloch v. *Maryland*, 17 U.S. (4 Wheat.) 316 (1819) 25
Metropolitan Life Ins. Co. v. *Taylor*, 481 U.S. 58 (1987) 5, 6, 13, 14, 28, 29
M. Nahas & Co. v. *First Nat'l Bank*, 930 F.2d 608 (8th Cir. 1991) 20
Osborn v. *Bank of the United States*, 22 U.S. (9 Wheat.) 738 (1824) 8
Pilot Life Ins. Co. v. *Dedeaux*, 481 U.S. 41 (1987) 13, 14
Pullman Co. v. *Jenkins*, 305 U.S. 534 (1939) 18
Rice v. *Santa Fe Elevator Corp.*, 331 U.S. 218 (1947) 19
Rivet v. *Regions Bank*, 522 U.S. 470 (1998) 9, 10, 11, 15
San Diego Bldg. Trades Council v. *Garmon*, 359 U.S. 236 (1959) 19
Schmeling v. *Nordam*, 97 F.3d 1336 (10th Cir. 1996) 20
Shamrock Oil & Gas Corp. v. *Sheets*, 313 U.S. 100 (1941) 18
Talbot v. *Silver Bow County*, 139 U.S. 438 (1891) 7, 23
Tiffany v. *National Bank*, 85 U.S. (18 Wall.) 409 (1873) 7, 25
United States v. *Locke*, 529 U.S. 89 (2000) 19
Vorhees v. *Naper Aero Club, Inc.*, 272 F.3d 398 (7th Cir. 2002) 20

Statutes: Page

U.S. Const. Art. III, § 2 8
Airline Deregulation Act of 1978, 49 U.S.C. 41713 19
Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 *et seq.* 6, 13, 28
§ 502(a), 29 U.S.C. 1132(a) 13, 14, 28, 29
§ 514(a), 29 U.S.C. 1144(a) 13, 14
Labor Management Relations Act, 1947, § 301, 29 U.S.C. 185 ..... 5, 11-12, 14, 15, 28
National Bank Act, ch. 106, § 30, 13 Stat. 108 ..... 1, 2, 21, 24
National Bank Act, 12 U.S.C. 21 *et seq.* ..... *passim*
12 U.S.C. 85 ..... 2, 21, 1a
12 U.S.C. 86 ..... *passim*
National Currency Act, ch. 58, 12 Stat. 665 ..... 23-24, 25
National Labor Relations Act, 29 U.S.C. 151 *et seq.*:
29 U.S.C. 157 19
29 U.S.C. 158 19
Ports and Waterways Safety Act, 46 U.S.C. 3703 19
Railway Labor Act, 45 U.S.C. 151 *et seq.*:
45 U.S.C. 151a 19
45 U.S.C. 153 19
28 U.S.C. 1331 ..... 2, 4, 8, 27, 29, 2a
28 U.S.C. 1367(a) 11, 3a
28 U.S.C. 1441(a) 2, 4, 8, 27, 2a
28 U.S.C. 1441(b) ..... *passim*
Ala. Code §§ 8-8-1 *et seq.* (2000) 2

Miscellaneous:

10 Am. Jur. 2d *Banks and Financial Institutions* § 517 (2002) 23
Cong. Globe, 38th Cong., 1st Sess. (1864) 24, 25
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Miscellaneous—Continued: Page

Richard E. Levy, *Federal Preemption, Removal Jurisdiction, and the Well-Pleaded Complaint Rule*, 51 U. Chi. L. Rev. 634 (1984) 17, 20
Office of the Comptroller of the Currency, *Report of the Secretary of the Treasury on the State of the Finances* (1863) 25, 26
Ross M. Robertson, *The Comptroller and Bank Supervision* (1995) 24
14B Charles A. Wright et al., *Federal Practice and Procedure: Jurisdiction 3d* (1998) 20

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INTEREST OF THE UNITED STATES

The Office of the Comptroller of the Currency (OCC) is the bureau within the Department of Treasury that is responsible for the administration of the National Bank Act, 12 U.S.C. 21 *et seq.*, and the supervision of national banks. As the agency charged with interpretation of the National Bank Act and with protecting the safety and soundness of the national banking system, the OCC has an interest in whether national banks may remove actions alleging claims within the scope of the Act's exclusive cause of action for usury, 12 U.S.C. 86.

STATEMENT

1. a. Section 30 of the National Bank Act, ch. 106, 13 Stat. 108, prescribes the interest rate that a national bank may

charge its loan customers and establishes a cause of action for usury. The provisions of Section 30 are codified at 12 U.S.C. 85 and 86. See App., *infra*, 1a-2a. Section 85 of the United States Code establishes the interest rates that national banks may charge. Section 86 establishes a cause of action and penalties for a violation of the substantive standards set by Section 85. As explained more fully below, it has long been established that the federal cause of action for usury in Section 86 is exclusive: it displaces any state-law usury claim asserted against a national bank. See, *e.g.*, *Farmers' & Mechs.' Nat'l Bank* v. *Dearing*, 91 U.S. 29, 32-35 (1875).

b. The federal question jurisdiction statute provides that the federal district courts "have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. 1331 (reproduced at App., *infra*, 2a). The general federal removal statute provides that, absent an exception expressly created by Congress, "any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or defendants" to the appropriate federal district court. 28 U.S.C. 1441(a); see 28 U.S.C. 1441(b) (any action "founded on a claim or right arising under" federal law "shall be removable") (reproduced at App., *infra*, 2a-3a). Thus, the removal statute permits a defendant to remove any action that arises under federal law.

2. a. Respondents were loan customers of petitioner Beneficial National Bank (Beneficial). Pet. App. 1a-2a. They sued Beneficial, its affiliate Beneficial Tax Masters, Inc. (also a petitioner), and H&R Block, Inc., in Alabama court. *Id.* at 21a-22a. Among other claims, respondents alleged that petitioners charged them excessive interest, in violation of Alabama Code §§ 8-8-1 *et seq.*, and the common law of usury. Pet. App. 2a & n.2. Respondents sought "compensatory and

punitive damages not to exceed $74,900 [each], in an amount to be determined by a jury." Compl. 11.

Petitioners and H&R Block removed the case to the United States District Court for the Middle District of Alabama, and respondents moved for a remand. Pet. App. 2a. Petitioners contended that removal was proper because respondents' usury claims necessarily arose under the federal cause of action created by 12 U.S.C. 86. The district court agreed, Pet. App. 21a-28a, but certified its decision for interlocutory appeal. *Id.* at 28a.

b. A divided panel of the United States Court of Appeals for the Eleventh Circuit reversed. Pet. App. 1a-20a. The court noted that the federal removal statute provides that any civil action brought in state court may be removed to federal district court provided the district court has jurisdiction. *Id.* at 5a. The court further noted that the district courts have federal question jurisdiction if a "properly pleaded complaint reveals that the claim is based on federal law." *Ibid.* The court explained that, under the "complete preemption" doctrine recognized by this Court, "a defendant may remove a case to federal court even though the plaintiff raises only state-law claims in her complaint, when 'the preemptive force of a [federal] statute is so extraordinary that it converts an ordinary state common-law complaint into one stating a federal claim.'" *Ibid.* (quoting *Caterpillar Inc.* v. *Williams*, 482 U.S. 386, 393 (1987)).

The court of appeals recognized that the National Bank Act creates a cause of action for usury and that the cause of action created by the Act is exclusive. See Pet. App. 13a & n.12. In the court's view, however, "where there are no further indications of congressional intent to permit removal, the existence of an exclusive federal remedy generally will not be enough to achieve complete preemption." *Id.* at 14a. Reviewing the history surrounding the enactment of the National Bank Act in 1864, the court found that "the

congressional debates amply demonstrate Congress's desire to protect national banks from state legislation" (*id.* at 11a), but the court found no "clear congressional intent to make claims under the NBA removable" (*id.* at 13a). Because the court found no specific congressional intent to permit removal at the time of enactment of the National Bank Act, the court held that the complete preemption doctrine was inapplicable and removal was improper. *Id.* at 15a-16a. Judge Tjoflat dissented. *Id.* at 17a- 20a.

SUMMARY OF ARGUMENT

A. The general removal statute provides that, absent an express exception, any action filed in state court may be removed to federal court if "the district courts of the United States have original jurisdiction" over the action. 28 U.S.C. 1441(a). Here, removal is based on the original jurisdiction of the district courts over "[a]ny civil action * * * founded on a claim or right arising under the * * * laws of the United States." 28 U.S.C. 1441(b); see 28 U.S.C. 1331. Whether an action arises under the laws of the United States is determined by the well-pleaded complaint rule, which provides that federal jurisdiction exists only if a federal question is presented by the plaintiff's properly pleaded complaint. Because a defense is not part of the plaintiff's well-pleaded statement of his claim, it has long been established that a plaintiff may not obtain federal jurisdiction by anticipating and refuting a federal defense.

This Court has also recognized, as a corollary to the well-pleaded complaint rule, that a plaintiff may not defeat federal jurisdiction by the simple expedient of omitting to plead *necessary* federal questions. Although the plaintiff is generally master of the complaint, that principle does not allow a plaintiff to refuse to rely on a federal cause of action that occupies the field in which his claim arises. Thus, under the "complete preemption" or "artful pleading" doctrine, if a

federal cause of action completely preempts a state cause of action, any claim that falls within the scope of the federal cause of action necessarily "arises under" federal law and may be removed to federal court.

Under the terms of the removal statute, complete preemption occurs whenever Congress has created an exclusive federal cause of action and the plaintiff's claim, as presented in the facts set out in the complaint, falls within the scope of that federal cause of action. When federal law provides a cause of action that occupies the field in which the plaintiff's claim arises, the plaintiff's claim can arise only under federal law. And, as described above, the text of the removal statute clearly provides that any action "arising under" federal law "shall be removable" to federal court. 28 U.S.C. 1441(b).

B. This Court's precedents confirm that understanding. In *Avco Corp.* v. *Aero Lodge No. 735*, 390 U.S. 557 (1968), the Court held that a state-law claim for breach of contract, based on an alleged breach of a collective bargaining agreement, was removable because it fell within the scope of Section 301 of the Labor Management Relations Act, 1947 (LMRA), 29 U.S.C. 185. As the Court later explained, "the necessary ground of decision was that the preemptive force of § 301 was so powerful as to displace entirely any state cause of action 'for violation of contracts between an employer and a labor organization.'" *Franchise Tax Bd.* v. *Construction Laborers Vacation Trust*, 463 U.S. 1, 23 (1983) (quoting 29 U.S.C. 185). In other words, Section 301 provides the exclusive cause of action for claims of breach of collective bargaining agreements, so those claims are removable even if couched in state-law terms.

The Court has repeatedly reaffirmed the *Avco* principle in later cases. Most notably, in *Metropolitan Life Insurance Co.* v. *Taylor*, 481 U.S. 58 (1987), the Court held that the state-law causes of action, which asserted improper processing of benefits claims under an employee benefit plan gov-

erned by the Employee Retirement Income Security Act of 1974 (ERISA), were "displaced by [Section 502(a)(1)(B) of ERISA, 29 U.S.C. 1132(a)(1)(B),] to the extent that complaints filed in state courts purporting to plead such state common law causes of action are removable to federal court." 481 U.S. at 60. Because a claim within the scope of Section 502(a) is "necessarily federal in character," it "'arise[s] under the . . . laws of the United States,' 28 U.S.C. § 1331, and is removable to federal court." *Id.* at 67.

C. The complete preemption rule advances the purposes of the removal statute. When a plaintiff invokes a claim within the scope of an exclusive federal cause of action but pleads the claim in state-law terms, the plaintiff suffers no legitimate harm from the recharacterization of the claim as a federal one supporting removal. Absent removal, the state court would have only two legitimate options—to recharacterize the claim in federal-law terms or to dismiss it altogether. Any plaintiff who truly seeks a recovery on that claim would prefer the first option, which would, of course, make the propriety of removal crystal clear. A third possibility, however, is that the state court would erroneously allow the claim to proceed under state law and thereby frustrate the federal policy embodied in the exclusive federal cause of action.

Moreover, complete preemption is not common. It arises only when a federal cause of action preempts the field in a particular area, and the claim alleged by the plaintiff falls within the preempted field. Field preemption is relatively rare, and field preemption accomplished through the provision of a federal cause of action is rarer still. In those circumstances, however, the plaintiff's claim necessarily arises under federal law and is therefore removable.

D. The application of the complete preemption rule to this case is straightforward. It has long been established that the National Bank Act, 12 U.S.C. 86, provides the exclusive

remedy for allegations of usury by national banks. This Court so held more than a century ago in *Farmers' & Mechanics' National Bank* v. *Dearing*, 91 U.S. 29, 32-35 (1875). The Court has repeatedly reaffirmed that holding, and it has become "well-settled law." Pet. App. 13a. The exclusive usury remedy is an instrumental component of the congressional design of the national banking system: a system of federally-chartered banks with federally-granted powers, operating under federal standards and subject to federal supervision, distinct and independent of the existing system of state banks. See *Talbott* v. *Silver Bow County*, 139 U.S. 438, 442-443 (1891); *Easton* v. *Iowa*, 188 U.S. 220, 229, 231-232 (1903). The National Bank Act created an exclusive usury remedy as part of that system and thereby deliberately set national banks apart from their state-chartered competitors and the state law of usury. See *Tiffany* v. *National Bank*, 85 U.S. (18 Wall.) 409, 412-413 (1873); *Marquette Nat'l Bank* v. *First of Omaha Serv. Corp.*, 439 U.S. 299, 314 (1978).

E. Because respondents have alleged usury by a national bank, their claim falls within the scope of the exclusive federal remedy provided by Section 86, and petitioners properly removed this case to federal court. The court of appeals erred in rejecting removal because of the absence of a specific congressional intent to permit removal of usury claims at the time of enactment of the National Bank Act. Although usury claims within the scope of Section 86 were not removable before Congress enacted the general federal question and removal statutes, they always involved exclusively federal claims. Thus, those claims became removable under the plain terms of those statutes. Specific congressional intent, in the National Bank Act, to make usury claims removable is not necessary because the removal statute itself evinces Congress's intent to permit removal of "any claim arising under" federal law. 28 U.S.C. 1441(b).

ARGUMENT

A CLAIM ALLEGING USURY BY A NATIONAL BANK NECESSARILY ARISES UNDER THE EXCLUSIVE CAUSE OF ACTION CREATED BY THE NATIONAL BANK ACT AND IS THUS REMOVABLE TO FEDERAL COURT

A. The Text Of The Removal Statute Makes Clear That Any Claim "Arising Under" Federal Law Is Removable, And A Claim Within The Scope Of An Exclusive Federal Cause Of Action Necessarily Arises Under Federal Law

1. The general federal removal statute provides that, absent an express exception, "any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants" to federal district court. 28 U.S.C. 1441(a). The federal question statute in turn provides that the district courts "have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. 1331. An action over which the district courts have jurisdiction based on federal question or "arising under" jurisdiction "shall be removable without regard to the citizenship or residence of the parties." 28 U.S.C. 1441(b). Thus, the removal statute permits a defendant to remove to federal court whenever the action is one "arising under" federal law within the meaning of Section 1331.

Although "arising under" jurisdiction as provided in the United States Constitution, Article III, Section 2, extends to any case in which federal law potentially "forms an ingredient," *Osborn* v. *Bank of the United States*, 22 U.S. (9 Wheat.) 738, 823 (1824), statutory "arising under" jurisdiction is more limited. See *Franchise Tax Bd.* v. *Construction Laborers Vacation Trust*, 463 U.S. 1, 8 & n.8 (1983). The

outer boundaries of the statutory jurisdiction are not precisely defined, but it is well established that a claim arises under federal law if federal law "creates the cause of action." *Id.* at 9 (quoting *American Well Works Co.* v. *Layne & Bowler Co.*, 241 U.S. 257, 260 (1916)).

The plaintiff is generally "the master of the claim." *Caterpillar Inc.* v. *Williams*, 482 U.S. 386, 392 (1987). Thus, if both federal and state law provide remedies for the wrong the plaintiff has allegedly suffered, the plaintiff may obtain federal jurisdiction by raising the federal claim or, conversely, "may avoid federal jurisdiction by exclusive reliance on state law." *Ibid.* The plaintiff may not, however, obtain federal jurisdiction by anticipating and refuting a federal defense. Under the "well-pleaded complaint" rule, "federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint." *Ibid.*; see *Louisville & Nashville R.R.* v. *Mottley*, 211 U.S. 149, 152 (1908). And, because removal jurisdiction is available only when the district courts have original jurisdiction, a defendant cannot remove a case to federal court based on a federal defense, including a defense that the plaintiff's state-law claim is preempted, "even if the defense is anticipated in the plaintiff's complaint, and even if both parties admit that the defense is the only question truly at issue in the case." *Rivet* v. *Regions Bank*, 522 U.S. 470, 475 (1998) (quoting *Franchise Tax Bd.*, 463 U.S. at 14).

An "independent corollary" to the well-pleaded complaint rule is the parallel principle that "a plaintiff may not defeat removal by omitting to plead necessary federal questions." *Rivet*, 522 U.S. at 475 (quoting *Franchise Tax Bd.*, 463 U.S. at 22); *Caterpillar*, 482 U.S. at 393. Thus, "[i]f a federal cause of action completely pre-empts a state cause of action any complaint that comes within the scope of the federal cause of action necessarily 'arises under' federal law" and may be removed to federal court. *Caterpillar*, 482 U.S. at

393 (quoting *Franchise Tax Bd.*, 463 U.S. at 24). The Court has described this application of the well-pleaded complaint rule as the "artful pleading" or "complete preemption" doctrine. See *ibid.*; *Rivet*, 522 U.S. at 475.

2. "Complete preemption" occurs when (1) Congress has created an exclusive federal cause of action and, (2) under the facts set out in the complaint, the plaintiff's claim comes within the scope of that cause of action. That conclusion follows from the plain language of the removal statute. When federal law provides a cause of action that occupies the field in which the plaintiff's claim arises, the plaintiff's claim can arise only under federal law. And, as described above, the text of the removal statute clearly provides that any action "arising under" federal law "shall be removable" to federal court. 28 U.S.C. 1441(b).

An exclusive federal cause of action that gives rise to complete preemption is rare. Complete preemption does not result whenever federal law conflicts with state law and therefore preempts it, or even whenever federal law occupies a field and thereby displaces all state law within that field. See generally *Hillsborough County* v. *Automated Med. Labs., Inc.*, 471 U.S. 707, 713 (1985) (distinguishing between conflict and field preemption). Conflict preemption and ordinary field preemption are only defenses to state-law claims and, as discussed above, such federal defenses do not provide a basis for removal. Conflict preemption is a defense because, even if state law is preempted because it conflicts with federal law, the plaintiff must "prove that the state-law [would result in liability on the part of the defendant] before the question will be reached whether anything in its provisions or in administrative conduct under it is inconsistent with the federal" law. *Franchise Tax Bd.*, 463 U.S. at 11 (quoting *Gully* v. *First Nat'l Bank*, 299 U.S. 109, 117 (1936)). Field preemption is likewise generally a defense because, except in the unusual circumstances in which the

federal law that occupies the field itself creates a substitute and exclusive cause of action, field preemption "does not transform the plaintiff's state-law claims into federal claims but rather extinguishes them altogether." *Rivet*, 522 U.S. at 476.

When, however, a federal cause of action itself has field preemptive effect, and the plaintiff asserts a claim within the scope of that cause of action, the claim, "although purportedly based on * * * preempted state law," necessarily arises under the exclusive federal cause of action, and "therefore arises under federal law." *Caterpillar*, 482 U.S. at 393. In that circumstance, because the plaintiff's claim actually arises under federal law, the federal district courts have original jurisdiction, and the removal statute authorizes the defendant to remove the case to federal court.[1]

B. This Court's Cases Confirm That A Claim Within The Scope Of An Exclusive Federal Cause Of Action Is Removable Even If The Claim Does Not Purport To Rely On Federal Law

The Court's precedents in the complete preemption area confirm that a case is removable if, under the facts alleged in the complaint, the plaintiff's claim falls within the scope of an exclusive federal cause of action, even if the complaint does not expressly invoke federal law. The Court first addressed the issue in *Avco Corp.* v. *Aero Lodge No. 735*, 390 U.S. 557 (1968). In *Avco*, an employer sued a union in state court for breach of contract based on the union's alleged breach of a "no strike" clause in a collective bargaining agreement. *Id.*

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[1] If the district courts have jurisdiction over any of a plaintiff's claims, those courts also have jurisdiction over "all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. 1367(a) (reproduced at App., *infra*, 3a). That jurisdiction is unaffected by whether the supplemental claims involve "additional parties." *Ibid.*

at 558. Section 301 of the Labor Management Relations Act, 1947 (LMRA), 29 U.S.C. 185, provided a cause of action for breach of the agreement, but the employer did not invoke that cause of action in its complaint and sought relief (an injunction) that was available only under state law. See *Franchise Tax Bd.*, 463 U.S. at 23.

This Court held that the employer's claim "arose under" Section 301 of the LMRA, even though "the plaintiff had undoubtedly pleaded an adequate claim for relief under the state law of contracts and had sought a remedy available *only* under state law." *Franchise Tax Bd.*, 463 U.S. at 23. See *Avco*, 390 U.S. at 560-561. As the Court subsequently explained, "the necessary ground of decision was that the preemptive force of § 301 was so powerful as to displace entirely any state cause of action 'for violation of contracts between an employer and a labor organization.'" *Franchise Tax Bd.*, 463 U.S. at 23 (quoting 29 U.S.C. 185). In other words, Section 301 of the LMRA supplies the *exclusive* cause of action for claims of breach of collective bargaining agreements. For that reason, "[a]ny * * * suit [within the scope of Section 301] is purely a creature of federal law, notwithstanding the fact that state law would provide a cause of action in the absence of § 301." 463 U.S. at 23.[2]

The Court next addressed complete preemption in *Franchise Tax Board*. California's Franchise Tax Board, the agency charged with enforcement of the State's income tax, brought suit in state court to collect unpaid taxes from the Construction Laborers Vacation Trust (CLVT), an employee

[2] As *Avco* makes clear, a claim may fall within the scope of an exclusive federal cause of action, and thus be removable, even if a federal court cannot award the remedy sought. *Caterpillar*, 482 U.S. at 391 n.4; Richard Fallon, Jr. et al., *Hart & Wechsler's The Federal Courts and The Federal System* 950 n.3 (1996). Indeed, Congress may decide to create an exclusive cause of action precisely in order to control the available remedies.

welfare benefit plan. 463 U.S. at 4-5. The Board's complaint included two state-law claims: one for back taxes and another for a declaration that CLVT's tax obligations were not preempted by Section 514(a) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1144(a). 463 U.S. at 5-7. CLVT removed the case to federal district court, but this Court held that the case was not properly removable. *Id.* at 7.

In reaching that holding, the Court rejected an argument by CLVT that, under *Avco*, the Board's causes of action were, "in substance, federal claims" because they necessarily arose under ERISA. 463 U.S. at 22-27. The Court reaffirmed that "it is an independent corollary of the well-pleaded complaint rule that a plaintiff may not defeat removal by omitting to plead necessary federal questions in a complaint." *Id.* at 22. The Court explained that "*Avco* stands for the proposition that if a federal cause of action completely preempts a state cause of action any complaint that comes within the scope of the federal cause of action necessarily 'arises under' federal law" and thus permits removal. *Id.* at 23-24. Moreover, the Court acknowledged that Section 502(a) of ERISA may completely preempt some state-law causes of action. *Id.* at 24. Nonetheless, the Court found it unnecessary to decide that question, because the causes of action brought by the Board did not "come[] within the scope of" any of the "causes of action" created by Section 502(a), and therefore the case was not removable. *Id.* at 25.

In *Metropolitan Life Insurance Co.* v. *Taylor*, 481 U.S. 58 (1987), the Court confronted the issue it had reserved in *Franchise Tax Board*—whether Section 502(a) of ERISA displaces state-law claims within its scope so that those claims necessarily arise under federal law and are removable. *Taylor* involved state common-law causes of action asserting improper processing of a claim for benefits under an ERISA plan. *Id.* at 60. In *Pilot Life Insurance Co.* v.

Dedeaux, 481 U.S. 41 (1987)—decided the same day as *Taylor*—the Court held that such state-law claims are pre-empted under Section 514(a) of ERISA because they "relate to" an employee benefit plan and do not fall within ERISA's "savings clause." See *Pilot Life*, 481 U.S. at 47-56; *Taylor*, 481 U.S. at 60. *Pilot Life*'s holding, however, merely established that Section 514(a) of ERISA provides a defense to those claims, which is not sufficient to permit removal. See p. 9, *supra*; *Taylor*, 481 U.S. at 64 ("ERISA pre-emption, without more, does not convert a state claim into an action arising under federal law.") (citing *Franchise Tax Bd.*, 463 U.S. at 25-27). Thus, the question facing the Court in *Taylor* was whether such state-law claims are "also displaced by [Section 502(a)(1)(B) of ERISA] to the extent that complaints filed in state courts purporting to plead such common law causes of action are removable to federal court under 28 U.S.C. § 1441(b)." 481 U.S. at 60.

After observing that the claims were "within the scope of § 502(a)," the Court framed the question as whether Section 502(a) has "that extraordinary pre-emptive power, such as been found with respect to § 301 of the LMRA, that converts an ordinary state common law complaint into one stating a federal claim." *Id.* at 64-65. The Court held that Section 502(a) has that preemptive power because its language and legislative history reveal that it was modeled on Section 301. *Id.* at 65-66. Based on those considerations, the Court found a "clear intention to make § 502(a)(1)(B) suits brought by participants or beneficiaries federal questions for purposes of federal court jurisdiction." *Id.* at 66. The Court therefore concluded that "this suit, though it purports to raise only state law claims, is necessarily federal in character by virtue of the clearly manifested intent of Congress. It, therefore, 'arise[s] under the . . . laws . . . of the United States,' 28 U.S.C. § 1331, and is removable to federal court." *Id.* at 67.

The Court addressed complete preemption again in *Caterpillar*. There, the Court held that state-law claims for breach of individual employment contracts were not completely preempted by Section 301 of the LMRA because the claims did not fall within the scope of Section 301. 482 U.S. at 388-399. The Court explained that, although the plaintiffs could have alleged facts that showed a breach of their collective bargaining agreement, they had not done so, and complete preemption principles do not "justify removal on the basis of facts not alleged in the complaint." *Id.* at 397. At the same time, the Court reaffirmed that, when a plaintiff does invoke a state-law claim "that comes within the scope of the federal cause of action," that claim "is considered, from its inception, a federal claim," because Section 301 "displace[s] entirely any state cause of action" within its scope. *Id.* at 393-394 (quoting *Franchise Tax Bd.*, 463 U.S. at 23-24); see *id.* at 399.

The Court most recently addressed complete preemption in *Rivet*, which held that the federal affirmative defense of claim preclusion does not provide a basis for removal of the allegedly preempted state-law claim. 522 U.S. at 476-478. The Court explained that "[a] case blocked by the claim preclusive effect of a prior federal judgment differs from the standard case governed by a completely preemptive federal statute in this critical respect: The prior federal judgment does not transform the plaintiff's state-law claims into federal claims but rather extinguishes them altogether." *Id.* at 476. In other words, claim preclusion does not result in complete preemption because, although the plaintiff's state claims are barred by federal law, federal law does not provide a substitute, exclusive cause of action.

The Court's cases thus confirm that two conditions must be met to render a claim that has been pleaded as a state-law claim necessarily federal in character and therefore removable: (1) There must be a federal cause of action that is

exclusive in that it displaces any state-law claim within its scope; and, (2) under the facts alleged in the complaint, the plaintiff's claim must come within the scope of that federal cause of action. If those two conditions are satisfied, the principle that federal jurisdiction is determined based on a *well-pleaded* complaint dictates that the plaintiff's claim necessarily arises under the exclusive federal cause of action, and the case thus may be removed.

C. The Rule That A Claim Within The Scope Of An Exclusive Federal Cause Of Action Is Removable Advances The Purposes Of The Removal Statute

The complete preemption rule reflected in the Court's cases advances the purposes of the removal statute without trenching on the legitimate rights of plaintiffs or offending principles of comity and federalism. The purposes of federal question removal jurisdiction are essentially twofold: (1) to ensure the availability of a forum with special expertise in federal law in order to promote its accurate and uniform interpretation, and (2) to protect the federal rights of defendants. See *Boys Mkts., Inc.* v. *Clerks Union*, 398 U.S. 235, 246-247 & n.13 (1970). Removal jurisdiction enables defendants, as well as plaintiffs, to choose to have federal district courts resolve cases that turn on federal law. At the same time, removal jurisdiction provides "for the protection of defendants who might be entitled to try their rights, or assert their privil[e]ges, before [a federal] forum." *Martin* v. *Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 348 (1816).

The complete preemption doctrine ensures that, in the rare circumstances in which Congress creates an exclusive federal cause of action, defendants retain access to a federal forum to litigate federal claims even when plaintiffs—artfully or inadvertently—incorrectly characterize those claims as arising under state law. Although the availability of review in this Court serves the same interests as removal

jurisdiction, see *Martin*, 14 U.S. (1 Wheat.) at 347-348, it alone cannot fully safeguard those interests, for two reasons. First, the resources of the Court are limited, so removal may, as a practical matter, be the only opportunity for the defendant to obtain access to a federal forum. See David P. Currie, *Federal Courts: Cases and Materials* 160 (3d ed. 1982); Richard E. Levy, *Federal Preemption, Removal Jurisdiction, and the Well-Pleaded Complaint Rule*, 51 U. Chi. L. Rev. 634, 636 n.10 (1984). Second, limiting defendants to this Court's review "would deny [them] the benefit of a federal trial court's role in constructing a record and making fact findings," and "[h]ow the facts are found will often dictate the decision of federal claims." *England* v. *Louisiana State Bd. of Med. Exam'rs*, 375 U.S. 411, 416 (1964).

At the same time that the complete preemption rule advances the purposes of removal jurisdiction, it does not trench on the legitimate rights of plaintiffs. As the Court made clear in *Caterpillar*, even when Congress has created an exclusive federal cause of action covering a certain area, the plaintiff's claim will not be completely preempted if it does not depend on facts that give rise to a claim in that area. 482 U.S. at 394-395, 397. Moreover, in the great many situations in which the federal cause of action is not exclusive, the plaintiff can avoid federal jurisdiction by suing only under state law. See *id.* at 392 & n.7.

When the plaintiff invokes a claim within the scope of an exclusive federal cause of action but pleads the claim in state-law terms, the plaintiff suffers no legitimate harm by the recharacterization of the claim as a federal one permitting removal. Absent removal, the state court would have only two legitimate options—to recharacterize the claim in federal-law terms or to dismiss the claim altogether. Any plaintiff who truly seeks a recovery on that claim would prefer the first option, which would make the propriety of

removal crystal clear. A third possibility, however, is that the state court would err and allow the claim to proceed under state law notwithstanding Congress's decision to make the federal cause of action exclusive. The complete preemption rule avoids that potential error.

The complete preemption rule nonetheless respects the prerogatives of state courts. The rule does not provide for removal when state law provides the cause of action and federal law provides only a defense—whether the defense is that the state cause of action is unconstitutional or that it is otherwise precluded by federal law. Thus, the complete preemption doctrine preserves both state court primacy in resolving questions of state law and state court authority to determine in the first instance whether state law must yield to a federal law defense. The doctrine calls for removal only when the cause of action is necessarily federal.

Of course, when a defendant removes a case under the complete preemption rule, state courts will not decide whether Congress has created an exclusive federal cause of action or whether a particular claim is within its scope. But those are federal questions, like all questions about whether a case is removable. See *Shamrock Oil & Gas Corp.* v. *Sheets*, 313 U.S. 100, 104 (1941). It no more intrudes on state court jurisdiction for federal courts to decide those questions than it does for federal courts to decide the other questions about removal that are committed to them—such as whether the party seeking removal is properly characterized as a defendant, *Chicago, Rock Island, & Pac. R.R.* v. *Stude*, 346 U.S. 574, 580 (1954); whether there is fraudulent joinder, *Pullman Co.* v. *Jenkins*, 305 U.S. 534, 541 (1939); whether there is complete diversity, *Caterpillar Inc.* v. *Lewis*, 519 U.S. 61, 68-70 (1996); or whether there is in fact no federal cause of action but only a federal defense, *Gold-Washing & Water Co.* v. *Keyes*, 96 U.S. 199 (1877).

For the same reasons that the complete preemption rule respects the autonomy of state courts, it does not allow undue access to the federal courts. As explained above, it permits removal only when federal law creates the cause of action—when federal law provides not just "a shield but * * * an 'exclusive' federal sword as well." Richard Fallon, Jr. et al., *Hart & Wechsler's The Federal Courts and The Federal System* 950 (1996). Thus, it allows removal only of claims that would clearly have been removable had they been properly pleaded.

Complete preemption also does not arise frequently. As described above, it arises only when a federal cause of action preempts the field in a particular area, and the claim alleged by the plaintiff falls within the preempted field. Field preemption is relatively rare. It occurs only when displacement of state law is "the clear and manifest purpose of Congress." *Rice* v. *Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). And field preemption accomplished through the provision of a federal cause of action is rarer still.[3]

In those circumstances, however, federal law necessarily provides the plaintiff's cause of action. And where federal law provides the plaintiff's cause of action, the case is not only certain to require the resolution of federal questions but

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[3] Congress sometimes occupies a field in order to provide a comprehensive administrative remedy. See, *e.g.*, *Hawaiian Airlines, Inc.* v. *Finazzo*, 512 U.S. 246 (1994) (collective bargaining disputes under Railway Labor Act, 45 U.S.C. 151a, 153); *San Diego Bldg. Trades Council* v. *Garmon*, 359 U.S. 236 (1959) (activities arguably protected or prohibited by the National Labor Relations Act, 29 U.S.C. 157, 158). Congress also sometimes occupies a field and provides only a limited administrative remedy or no remedy at all. See, *e.g.*, *United States* v. *Locke*, 529 U.S. 89, 110-111 (2000) (Title II, Ports and Waterways Safety Act, 46 U.S.C. 3703); *American Airlines* v. *Wolens*, 513 U.S. 219, 222-224 (1995) (Airline Deregulation Act of 1978, 49 U.S.C. 41713). In those circumstances, there is no removal under complete preemption principles because there is no substitute federal cause of action that gives the federal district courts original jurisdiction.

those questions will determine the outcome. See Levy, *supra*, 51 U. Chi. L. Rev. at 638-641. It is therefore entirely appropriate for the case to be resolved in federal court.[4]

Finally, the complete preemption rule, when properly understood, is not difficult to administer. That is not to say that the question whether a particular federal cause of action is exclusive may not sometimes be difficult, or that determining its scope may not sometimes present challenges. But those questions are familiar to the courts because they are the types of questions that the courts frequently face in resolving questions of field preemption. Thus, the courts should not have difficulty in applying the same principles to resolve questions of complete preemption.[5]

D. The National Bank Act Creates The Exclusive Cause Of Action For Usury By A National Bank, And Respondents' Usury Claim Falls Within the Scope Of That Cause of Action

The application of the complete preemption rule to this case is straightforward. It has long been established that the National Bank Act provides the exclusive remedy for allegations of usury by national banks, displacing any state causes of action, and respondents' complaint plainly alleges

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[4] Several courts of appeals have understood complete preemption to operate in essentially the manner described in this brief. See, *e.g.*, *Vorhees* v. *Naper Aero Club, Inc.*, 272 F.3d 398, 402-404 (7th Cir. 2001); *Schmeling* v. *Nordam*, 97 F.3d 1336, 1342 (10th Cir. 1996); *M. Nahas & Co.* v. *First Nat'l Bank*, 930 F.2d 608, 612 (8th Cir. 1991). There is no indication that their approach has led to an excessive number of removals to federal court or to any friction with state courts.

[5] Commentators have noted a "wide divergence among lower federal courts as to the contexts in which complete preemption is applicable." 14B Charles A. Wright et al., *Federal Practice and Procedure: Jurisdiction 3d* § 3722.1, at 553 (1998). But the disagreement among the lower courts does not stem from difficulty in administering the complete preemption test described in this brief but from "different judicial formulations" of the complete preemption test. *Ibid.*

that petitioner Beneficial, a national bank, committed usury. Thus, even though respondents have cast that claim as arising under Alabama law, it necessarily arises under the National Bank Act, and petitioners properly removed the case to federal court.

1. Section 30 of the National Bank Act prescribes the interest rates that national banks may charge, and establishes a cause of action for usury. The substantive rates are set out in 12 U.S.C. 85, and the cause of action is found in 12 U.S.C. 86. Under Section 86, a national bank that charges more than the rate allowed by Section 85 forfeits the entire interest on the debt. If the interest has already been paid, the person who paid the interest (or his representative) may bring an action to recover twice the amount of interest paid. The action must be brought within two years of the usurious transaction.

As the court of appeals acknowledged, it is "well-settled law that § 86 provides the exclusive remedy for usury claims against a national bank." Pet. App. 13a. This Court so held in 1875, only a decade after the National Bank Act was enacted in 1864. In *Farmers' & Mechanics' National Bank* v. *Dearing*, 91 U.S. 29 (1875), the loan customer urged that the penalty for usury by a national bank should be forfeiture of the entire debt—as provided under New York law—rather than the more lenient penalties set out in Section 86. This Court held that a State has no power to supplement the remedies established by the National Bank Act, which "can be only that which the statute prescribes." *Id.* at 35. The Court explained that the provisions of Section 86 "form a system of regulations. All parts are in harmony with each other, and cover the entire subject." *Id.* at 32. In addition, because national banks "are instruments designed to be used to aid the government in the administration of an important branch of the public service," state legislation that could interfere with them is permitted only if expressly or im-

pliedly authorized by Congress. *Id.* at 34-35. The Court concluded that, "[i]n any view that can be taken of the [federal cause of action for usury], the power to supplement it by State legislation is conferred neither expressly nor by implication." *Id.* at 35.

The Court confirmed the exclusivity of the usury remedy four years later in *Barnet* v. *National Bank*, 98 U.S. 555 (1878). In that case, a national bank sued to recover on a loan, and the customer's assignees attempted to assert, by way of counterclaim, a claim for usury. The Court held that the counterclaim was defective because "the remedy given by [the National Bank Act] is a penal suit." *Id.* at 559. As the Court explained, "[t]o that the party aggrieved or his legal representative must resort," and he "can have redress in no other mode or form of procedure." *Ibid.* In reaching its decision, the Court noted that any state statutes "upon the subject of usury may be laid out of view" because "[t]hey cannot affect the case." *Id.* at 558. The provisions of the National Bank Act "alone apply. Such provisions are exclusive." *Ibid.*

The Court has repeatedly reaffirmed the exclusivity of the National Bank Act's usury remedy. In *Haseltine* v. *Central National Bank*, 183 U.S. 132 (1901), as in *Barnet*, borrowers sought to set off allegedly usurious interest that they had paid against a judgment in favor of the bank for their failure to repay a promissory note. In rejecting that claim, the Court stated that, "as the note in question was given to a national bank, the definition of usury and the penalties affixed thereto must be determined by the national banking act, and not by the law of the state." *Id.* at 134. See *Evans* v. *National Bank*, 251 U.S. 108, 109 (1919) (Because "[r]espondent is a national bank, * * * whether transactions by it are usurious and the consequent penalties therefor, must be ascertained upon a consideration of the National Bank Act.").

Likewise, in *McCollum* v. *Hamilton National Bank*, 303 U.S. 245 (1938). the Court held that the penalty for usury under Section 86 "does not depend upon payment of the borrower's debt." *Id.* at 249. Thus, a bank may not satisfy a judgment for usury by deducting the amount of the penalty from the bank's claim against the bankrupt borrower's estate. See *id.* at 248. The Court stressed that the "right of set-off here involved does not at all depend upon the Tennessee statute upon which, at least in part, the state supreme court rested its ruling." *Ibid.* The National Bank Act defines "petitioner's right to recover, and respondent's liability for, the penalty." *Ibid.*

Decisions of the state courts and the federal courts of appeals are also replete with statements recognizing that "Section 86 provides the sole remedy for the recovery of usurious interest paid to a national bank" (*Community Bank & Trust, N.A.* v. *Keyser*, 285 S.E.2d 424, 429 (W. Va. 1981)), and that the federal remedy "preempts the field" (*First Nat'l Bank* v. *Nowlin*, 509 F.2d 872, 881 (8th Cir. 1975)). See 10 Am. Jur. 2d *Banks and Financial Institutions* § 517, at 445 & n.89 (2002) (citing cases). Indeed, over 70 years ago, the Vermont Supreme Court remarked that the fact "[t]hat the provisions of [Sections 85 and 86] superseded all state laws on the subject of interest and usury paid to national banks is now too well established to require discussion." *Cohen* v. *Welden Nat'l Bank*, 146 A. 252, 253 (Vt. 1929).

2. The exclusivity of the usury remedy provided by Section 86 furthers important purposes behind the National Bank Act. That Act was enacted to create a system of national banks, capable of operating nationwide, under federally-established standards, in order to provide a sound and stable system of banking institutions to support national economic development and establishment of a uniform national currency. See *Talbott* v. *Silver Bow County*, 139 U.S. 438, 442-443 (1891). The National Currency Act, Act of Feb.

25, 1863, ch. 58, 12 Stat. 665, provided for a national currency circulated by a new system of banks chartered by a Treasury Department bureau headed by the Comptroller of the Currency. In 1864, based largely on the Comptroller's recommendations for improving the Currency Act to encourage expansion of the national bank system, Congress enacted the National Bank Act, ch. 106, 13 Stat. 99. See Ross M. Robertson, *The Comptroller and Bank Supervision* 30-54 (1995). The legislative debate reflected a congressional assessment that the National Bank Act was important to the nation's survival and that threats to the new banking system from state banks and state legislation should be reduced or eliminated.[6]

Congress thus sought to ensure a national banking system nationwide in scope and uniform in character that could not be disrupted by state legislation. As this Court explained in *Easton* v. *Iowa*, 188 U.S. 220, 229 (1903), the National Bank Act had "in view the erection of a system extending throughout the country, and independent, so far as powers conferred are concerned, of state legislation which, if permitted to be applicable, might impose restrictions as various and as numerous as the states." The provision fixing the rate of interest that a national bank could charge on its loans and the remedy for exceeding that rate was a prominent feature of the Act. Because loans typically constitute the predominant asset on a bank's balance sheet, interest is a principal component of virtually every bank's income. Congress thus recognized that state manipulation of usury laws in ways

[6] See, *e.g.*, Cong. Globe, 38th Cong., 1st Sess. 1451 (1864) (Cong. Hooper); *id.* at 1893-1894 (Sen. Sumner); *id.* at 1897 (Sen. Sherman); *id.* at 2128-2129 (Sen. Sumner); *id.* at 2130 (Sen. Chandler).

that disadvantaged national banks could impair their survival and prosperity.[7]

As this Court has explained, the usury provisions were "intended to give [national banks] a firm footing in the different States where they might be located. It was expected they would come into competition with State banks, and it was intended to give them at least equal advantages in such competition." *Tiffany* v. *National Bank*, 85 U.S. (18 Wall.) 409, 412 (1873). The usury provisions were "considered indispensable to protect them against possible unfriendly State legislation" and "ruinous competition with State banks." *Id.* at 412-413. Indeed, Congress chose to give "advantages to National banks over their State competitors" by allowing a national bank to charge the highest interest rate allowed to any lender by the laws of the State in which bank is located, whether or not that rate is available to state banks. *Id.* at 413; see 12 U.S.C. 85; *Marquette Nat'l Bank* v. *First of Omaha Serv. Corp.*, 439 U.S. 299, 314 & n.26 (1978).

The Comptroller, in his report recommending changes to the Currency Act, had compared state power to regulate usury by national banks to state power to tax the Bank of the United States, which this Court, in *M'Culloch* v. *Maryland*, 17 U.S. (4 Wheat.) 316, 431 (1819), described as "the power to destroy." See Office of the Comptroller of the Currency, *Report of the Secretary of the Treasury on the State of the Finances* 53 (1863). The Comptroller stated that, unless Congress regulated usury by national banks, "State laws might so control or impede the business of the banks as to render the act itself practically inoperative." *Ibid.* The Comptroller also thought it critical to fix a reasonable nationwide penalty for usury by national banks,

[7] See, *e.g.*, Cong. Globe, 38th Cong., 1st Sess. 1375 (1864) (Cong. Pike); *id.* at 1376 (Cong. Miller); *id.* at 2124 (Sen. Sherman); *id.* at 2125 (Sen. Pomeroy); *id.* at 2126 (Sen. Sherman).

and he criticized "the more stringent laws of some States and the less stringent ones of others." *Id.* at 54. Thus, an exclusive federal cause of action with distinct federal remedies was critical to address the problems identified by the Comptroller. Congress's response was the exclusive usury remedy of the National Bank Act.

3. Respondents' complaint clearly alleges a claim that falls within the scope of that exclusive remedy. Count IV of the complaint, entitled "Usury Violations," alleges that petitioners "charged each [respondent] excessive interest" and that respondents suffered damages by "paying excessive interest" to petitioners. Compl. 11. That claim necessarily arises under the National Bank Act, 12 U.S.C. 86.

E. The Court Of Appeals Erred By Requiring Specific Evidence That Congress, When It Enacted The National Bank Act, Intended To Allow Removal Of Usury Claims

Because respondents' usury claim necessarily arises under the exclusive federal remedy provided by Section 86, petitioners properly removed the case to federal court. The court of appeals did not dispute that Section 86 provides an exclusive remedy or that respondents' claim falls within its scope. Rather, the court held that, "where there are no further indications of congressional intent to permit removal, the existence of an exclusive federal remedy generally will not be enough to achieve complete preemption." Pet. App. 14a. In particular, the court found it dispositive that the legislative history of the National Bank Act does "not demonstrate that Congress desired to protect national banks from facing suit in state court." *Id.* at 11a. In looking for a congressional intent to keep usury cases out of state court, the court of appeals focused on the wrong question. The relevant question is not whether Congress specifically intended to permit removal when it enacted the National Bank

Act but whether Congress intended usury claims against national banks to arise exclusively under federal law. Because Congress did so intend, such claims fall squarely within the terms of the removal statute.

1. As the court of appeals observed, plaintiffs who invoke the cause of action in Section 86 may sue either in federal or in state court. See Pet. App. 12a n.11 (describing the venue provision of National Bank Act). Accordingly, before passage of the general removal statute, even actions expressly brought under Section 86—which undisputably stated federal claims—could not be removed, because Congress had not yet authorized their removal. There can be no doubt, however, that actions brought under Section 86 *became removable* when Congress enacted the general federal question and removal statutes, because those actions arise under federal law and thus fall squarely within the terms of the removal statute.

By the same token, actions that purport to allege state-law usury claims against national banks *became removable* when Congress enacted the general federal question and removal statutes.[8] Specific congressional intent to make usury claims removable is not necessary because the removal statute itself evinces Congress's intent to permit removal of "any claim arising under" federal law. 28 U.S.C. 1441(b); see 28 U.S.C. 1331, 1441(a). The well-pleaded complaint rule and its corollary, the complete preemption doctrine, are interpretations of the "arising under" language of the federal question and removal statutes. Whether or not a claim could have been removed before those statutes were enacted is not relevant to whether the claim "aris[es] under"

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[8] Although such claims, like usury claims expressly brought under the National Bank Act, were not removable before passage of the general federal removal statute, they were nonetheless necessarily federal claims. Thus, a state court should have recharacterized any such claim as a claim under the National Bank Act.

federal law within the meaning of those statutes. And consequently it is not relevant to whether the claim is removable under those statutes.

2. This Court's cases do not require a different conclusion. In *Avco*, the Court held that claims within the scope of Section 301 of the LMRA are removable because they are claims "arising under the 'laws of the United States' within the meaning of the removal statute." 390 U.S. at 560. The Court concluded that those claims arise under federal law because Section 301 "displace[s] entirely any state cause of action 'for violation of contracts between an employer and a labor organization.'" *Franchise Tax Bd.*, 463 U.S. at 23. In deciding *Avco*, the Court did not inquire into the presence or absence of any specific congressional intent to permit removal of claims under Section 301. Nor did the Court indicate that specific intent to permit removal is required when the Court described *Avco* and applied the complete preemption doctrine in *Franchise Tax Board*, *Caterpillar*, and *Rivet*.

The Court did refer to congressional intent as a "touchstone" of its removal analysis in *Taylor*. See 481 U.S. at 66 (noting that "Congress has clearly manifested an intent to make causes of action within the scope of the civil enforcement provisions of § 502(a) removable to federal court"); see also *id.* at 67-68 (Brennan, J., joined by Marshall, J., concurring). And the Court noted that, without some indication that Congress intended to employ "extraordinary preemptive power," the question before it would be a close one. *Id.* at 64, 65. But an examination of the Court's reasoning reveals that the Court was really inquiring into congressional intent that claims within the scope of Section 502(a) necessarily arise under federal law, not congressional intent on the specific issue of removal.

In answering that question, the Court relied on the fact that the language of the ERISA provision that gives the federal courts jurisdiction over claims under Section 502(a) "closely parallels" the language of Section 301, which had been held to result in complete preemption in *Avco*. *Id.* at 66. The Court also relied on a statement in Section 502(a)'s legislative history that all actions within its scope "*are to be regarded as arising under the laws of the United States, in similar fashion to those brought under section 301.*" *Ibid.* The Court noted that "[n]o more specific reference to the *Avco* rule can be expected," even though the statement focused on the claims' status as arising under federal law, rather than their removal status. Indeed, the Court characterized the legislative history that it had reviewed as demonstrating Congress's "clear intention to make [Section 502(a) suits] federal questions for the purposes of federal court jurisdiction." 481 U.S. at 66. And, once the Court determined that claims within the scope of Section 502(a) are "necessarily federal in character by virtue of the clearly manifested intent of Congress," *id.* at 67, the Court readily concluded that those claims are "removable to federal court" because they "arise[] under the . . . laws . . . of the United States." *Ibid.* (quoting 28 U.S.C. 1331 and citing 28 U.S.C. 1441(b)).

The principal difference between this case and *Taylor* is that, unlike the exclusivity of Section 502(a), which was an unresolved question at the time the Court decided *Taylor* and its companion case, *Pilot Life*, the exclusive nature of Section 86 of the National Bank Act has long been established. Claims alleging usury by a national bank therefore clearly "arise[] under the . . . laws . . . of the United States" and are removable to federal court. 481 U.S. at 67.

Indeed, even if a finding of complete preemption requires something more than the conclusion that Congress created an exclusive cause of action that displaces state-law causes of action, the usury remedy under the National Bank Act satisfies that requirement. As described above, Congress

created an exclusive federal usury remedy precisely to avoid subjecting national banks to the potentially draconian remedies of state usury law. State-law actions that are "artfully pled" to avoid federal law expose national banks to the very danger that Congress sought to avoid.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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MARCH 2003

APPENDIX

STATUTORY APPENDIX

1. Section 85 of Title 12, United States Code, provides:

§ 85. Rate of interest on loans, discounts and purchases

Any association may take, receive, reserve, and charge on any loan or discount made, or upon any notes, bills of exchange, or other evidences of debt, interest at the rate allowed by the laws of the State, Territory, or District where the bank is located, or at a rate of 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal reserve bank in the Federal reserve district where the bank is located, whichever may be the greater, and no more, except that where by the laws of any State a different rate is limited for banks organized under state laws, the rate so limited shall be allowed for associations organized or existing in any such State under title 62 of the Revised Statutes. When no rate is fixed by the laws of the State, or Territory, or District, the bank may take, receive, reserve, or charge a rate not exceeding 7 per centum, or 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal reserve bank in the Federal reserve district where the bank is located, whichever may be the greater, and such interest may be taken in advance, reckoning the days for which the note, bill, or other evidence of debt has to run. The maximum amount of interest or discount to be charged at a branch of an association located outside of the States of the United States and the District of Columbia shall be at the rate allowed by the laws of the country, territory, dependency, province, dominion, insular possession, or other political subdivision where the branch is located. And the purchase, discount, or sale of a bona fide bill of exchange, payable at another place

than the place of such purchase, discount, or sale, at not more than the current rate of exchange for sight drafts in addition to the interest, shall not be considered as taking or receiving a greater rate of interest.

2. Section 86 of Title 12, United States Code, provides:

§ 86. Usurious interest; penalty for taking; limitations

The taking, receiving, reserving, or charging a rate of interest greater than is allowed by section 85 of this title, when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon. In case the greater rate of interest has been paid, the person by whom it has been paid, or his legal representatives, may recover back, in an action in the nature of an action of debt, twice the amount of the interest thus paid from the association taking or receiving the same: *Provided,* That such action is commenced within two years from the time the usurious transaction occurred.

3. Section 1331 of Title 28, United States Code, provides:

§ 1331. Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

4. Section 1441 of Title 28, United States Code, provides in relevant part:

§ 1441. Actions removable generally

(a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants to the district court of the United States for the district and

division embracing the place where such action is pending. For purposes of removal under this chapter, the citizenship of defendants sued under fictitious names shall be disregarded.

(b) Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

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5. Section 1367(a) of Title 28, United States Code, provides:

§ 1367. Supplemental jurisdiction

(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

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